

Town of Concord  
Natural Resources Commission  
141 Keyes Road  
Concord, MA 01742

## **Wetlands Setback Policy**

Unless proven otherwise by the applicant, the Natural Resources Commission (NRC) shall presume that any new structure within 50 feet of a wetland resource area, will have a significant adverse impact on the adjacent wetland and should not be permitted.

### Purpose of Policy

The NRC has found that activity in the 100-foot buffer zone adjacent to wetland resource areas poses a serious threat to the ability of such areas to fully protect the eight public interests identified in the Massachusetts Wetlands Protection Act (M.G.L. Ch. 131 §40). As a result, the NRC strongly discourages **all** new structures within 50 feet of wetlands. Protecting this portion of the 100-foot buffer zone will reduce impacts to adjacent wetland resource areas.

### Basis of Policy

Scientific research, and the NRC's own experience in reviewing a wide variety of projects, demonstrates that alteration within the buffer zone consistently results in destructive effects on the wetlands themselves. These include, but are not limited to, disturbance of natural vegetation along the wetland edge, pollutant run-off, fill material, and other substances deposited into wetland resource areas, stockpiling or dumping of materials or debris which migrate over time into wetlands, and wildlife habitat disturbance, including to nesting sites and corridors that are important to wetland-dependent species. The NRC has also noted a tendency on the part of many project proponents to design projects to the absolute limit of the wetland boundary. In most instances it is vital to protect the buffer zone and prevent the inevitable destructive impacts on adjacent wetlands.

### The Policy

As used herein:

50-foot "No Build Zone" shall mean the 50-foot area adjacent to a wetland resource area where no new structures are permitted.

"Construction" shall mean the construction of any structure or building, including, without limitation, any residential or commercial building, garage, shed, barn, tennis court, deck, swimming pool, driveway, or landscaping project.

"Structure" shall include, but not be limited to, any new impervious surface such as buildings, sheds, garages, barns, tennis courts, swimming pools, and driveways.

In acting upon Notices of Intent and Determinations of Applicability, the NRC will presume that any new structures proposed within 50 feet of wetlands will have a significant adverse impact on the wetlands, and such proposals shall not be permitted unless the applicant demonstrates that (1) such activity would not have adversely affect the interests identified in the Act, or (2) public benefits, such as health or safety, outweigh any such alteration. The applicant shall have the burden of proof on this issue. Factors to be considered by the NRC in determining whether the applicant has met this burden shall include, but are not limited to, the following:

Slope of the buffer zone

Type and structure of vegetation in the buffer zone

Degree and scale of past alterations in the buffer zone

Ecological integrity of the adjacent wetlands

Importance of the buffer zone to wildlife utilizing the wetland

Whether the proposed buffer zone activity would be permitted if it were in a wetland

Any ecological benefits arising from the proposed activity, such as removal of invasive vegetation or creation of enhanced wildlife habitat

Any public benefits arising from the proposed activity

Applicants wishing to rebut the presumption set forth in this policy shall provide the NRC with the following information, together with any additional relevant information which the NRC may require:

A cross-sectional profile of elevation changes in any area of the buffer zone within 50 feet of a wetland that would be disturbed by the proposed activity

A description of the nature of any public or ecological benefits which may arise from the proposed activities

It is the NRC's policy, where it has discretion, to prohibit any activity in the wetlands except where there are exceptional circumstances, where no other practical alternative exists, and where satisfactory replication takes place to mitigate any alteration. Activities identified in the WPA Regulations as minor activities [310 CMR 10.02(2)(b)(2)] will be given consideration as minor activities and exempt from the policy. All activity within the 100-foot buffer zone will continue to be reviewed on an individual case-by-case basis.

Adopted by unanimous vote of the Natural Resources Commission on May 20, 1994.

Amended by the Natural Resources Commission on July 13, 2007

Amended by the Natural Resources Commission on September 16, 2009